judicial authority may, as Mr. Chief Justice Taney said, "depend altogether on the force of the reasoning by which it is supported."

MR. JUSTICE STONE and MR. JUSTICE ROBERTS join in this opinion.

CANADA MALTING CO., LTD. *v.* PATERSON STEAMSHIPS, LTD.*

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 487. Argued February 25, 1932.—Decided April 11, 1932.

1. In a suit in admiralty between foreigners it is ordinarily within the discretion of the District Court to refuse to retain jurisdiction; and the exercise of its discretion will not be disturbed unless abused. P. 418.
2. This rule applies even though the cause of action arose in this country. Pp. 418, 419.
3. Two ships of Canadian registry and ownership, each carrying cargo shipped from one Canadian port to another, collided on Lake Superior while unintentionally in United States waters, and one ship sank. While suit was pending in a Canadian court of admiralty to determine liability as between the ships, libels *in personam* against the owner of one of them were filed by cargo owners in a federal district court in New York. All the parties were citizens of Canada, and the officers and crew of each vessel—the material witnesses—were citizens and residents of that country. Opposing affidavits alleged that the motive of the cargo owners in coming to a court of the United States lay in the opportunity in our law to recover full damages from the non-carrying vessel, whereas, in Canada, the liability would be divided equally between the two vessels if both were at fault. The district court dismissed the libels, but ordered that the respondent should appear and file security in any action which might be instituted by the libelants in the admi-

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* Together with No. 488, *British Empire Grain Co., Ltd.* v. *Paterson Steamships, Ltd.*, and No. 489, *Starnes* v. *Same.*

ralty courts of Canada, so that they would not by dismissal of the libels lose the security gained by foreign attachment.

Held that the refusal to retain jurisdiction was not an abuse of discretion. P. 423.

51 F. (2d) 1007, affirmed.

CERTIORARI, 284 U. S. 612, to review the affirmance of decrees dismissing three libels in admiralty. 49 F. (2d) 802, 804.

Mr. D. Roger Englar, with whom *Messrs. Oscar R. Huston, Leonard J. Matteson, Henry J. Bigham,* and *James W. Ryan* were on the brief, for petitioners.

The Treaty of January 11, 1909, clearly provides that both of the parties shall have the right to navigate freely throughout the waters of the Great Lakes, on either side of the international boundary line; and provides with equal clearness that vessels of one nation entering the territorial waters of another, are subject to the local laws, which, in this case, undoubtedly include the rule that all vessels must navigate with caution and at moderate speed in fog. The only limitation on the sovereignty of the United States, so far as concerns Canadian vessels, is that it shall not pass any law inconsistent with the free navigation of the waters in question by such vessels; and that it shall not pass any law which does not apply equally to the ships and citizens of both countries. There is not the slightest support in the treaty for the suggestion that the maritime law of the United States is not effective on the Great Lakes up to the international boundary line. These waters remain a part of the United States and subject to its laws, just as much as New York harbor or the Mississippi River.

It follows that any liability for a tort committed in these waters is determined, both as to its existence and its extent, by the maritime law of the United States. *The Lottawanna,* 21 Wall. 558; *Slater* v. *Mexican National*

R. Co., 194 U. S. 120; *Smith* v. *Condry*, 1 How. 28, 32; *New York Cent. R. Co.* v. *Chisholm*, 268 U. S. 29, 32; *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347; *Western Union* v. *Brown*, 234 U. S. 542.

The Scotland, 105 U. S. 24, 29, dealt with a collision on the high seas. The Great Lakes are wholly territorial. Moore, Dig. of Int. L., vol. 1, pp. 672–3; Hyde, Int. L., vol. 1, p. 268; Hunt, vol. 4, Am. Jour. Int. L., p. 285.

In cases of collision occurring within the territorial limits of the United States, the admiralty jurisdiction conferred upon the District Courts is positive and mandatory, and there is no discretion to decline jurisdiction even though the parties are not citizens of the United States. Const., U. S., Art. III, § 2, cl. 1; Jud. Code, § 24 as amended (28 U. S. C., § 41); *Second Employers' Liability Cases*, 223 U. S. 1, 58–9; *Cohens* v. *Virginia*, 6 Wheat. 264, 403; *Raich* v. *Truax*, 219 Fed. 273, 285; *Gregonis* v. *P. & R. Coal & I. Co.*, 235 N. Y. 152; *Chicot County* v. *Sherwood*, 148 U. S. 529, 534; *McClellan* v. *Carland*, 217 U. S. 268, 282; *Kline* v. *Burke Construction Co.*, 260 U. S. 226, 234; *Hyde* v. *Stone*, 20 How. 170, 175; *Ex parte United States*, 242 U. S. 27.

Charter Shipping Co. v. *Bowring, Jones & Tidy*, 281 U. S. 515, 517, and *Langnes* v. *Green*, 282 U. S. 531, 544, merely restate the rule laid down in *The Belgenland*, 114 U. S. 355, which is expressly limited to controversies between foreigners in cases not arising in the country of the forum or cases arising beyond the territorial jurisdiction of the country to which the courts belong.

The remarks of this Court in *The Maggie Hammond*, 9 Wall. 435, 457, to the effect that the jurisdiction was not obligatory, clearly related to a case, like the one before it, where the cause of action arose outside the territorial limits of the United States.

There is in fact no basis for suggesting that jurisdiction should be discretionary with respect to a collision occur-

ring within the territorial limits of this country. The act is wrongful and gives rise to a cause of action only because of the laws of this country. The cause of action arises out of the law of this country and as a result of a breach of its laws. Our courts have criminal as well as civil jurisdiction of offenses at the point at which the collision occurred. The violations of law which contributed to this collision are a breach of our peace and of the security which our laws guarantee to the strangers within our gates, as well as to our own citizens. Brown on Juris., 2d ed., p. 22; Story, Confl. L., § 541; *id.*, 8th ed., p. 754; Elihu Root, 4 Am. J. Int. L., p. 521.

Within the territorial limits of the United States there can be no law other than that of the United States. *The Western Maid,* 257 U. S. 419, 432; *United States* v. *Bevans,* 3 Wheat. 336, 388; *The Apurimac,* 7 F. (2d) 741; *Heredia* v. *Davies,* 12 F. (2d) 500; *Uravic* v. *Jarka Co.,* 282 U. S. 234, 240.

In matters relating to the internal discipline of the ship, American law, both civil and criminal, is sometimes applied to acts done on board American vessels in foreign waters. *United States* v. *Rodgers,* 150 U. S. 249; *Thompson Towing & Wrecking Assn.* v. *McGregor,* 207 Fed. 209; Webster, Secretary of State, to Lord Ashford, in *United States* v. *Rodgers, supra,* pp. 264, 265; *Cunard S. S. Co.* v. *Mellon,* 262 U. S. 100, 123–4.

We think it is clear that the discretion mentioned in the cases last cited is to be exercised by Congress or by the treaty-making power, and not by the courts. The situation is quite different where our courts are asked to enforce the laws of a foreign country. They do so only as a matter of comity; and they may, in their discretion decline to do so. The presumption is that in any suit by these petitioners against the respondent in the Canadian courts, those courts would apply the substantive law

of the United States. *The Eagle Point,* 142 Fed. 453, certiorari denied, 201 U. S. 644.

By the Fourteenth Amendment and by § 1977 of the Revised Statutes, all persons, whether citizens or aliens, are entitled to the equal protection of the laws in respect of matters arising within the territory of the United States. *Yick Wo* v. *Hopkins,* 118 U. S. 356, 369.

Mr. Ray M. Stanley, with whom *Mr. Ellis H. Gidley* was on the brief, for respondent.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

These three libels in admiralty *in personam* were brought in the federal court for western New York, by owners of cargo laden on the steamer "Yorkton" to recover for loss resulting from the sinking of that vessel in a collision with respondent's steamer "Mantadoc," in Lake Superior, on the American side of the international boundary line. The respondent moved, in each case, that the District Court exercise its discretion to decline jurisdiction and dismiss the libels on the ground that all the parties were citizens of Canada and that the controversy concerned "matters . . . properly the subjects of hearing and determination" by the Canadian courts. The motions were granted, 49 F. (2d) 802, 804; and the decrees of the District Court were affirmed by the Circuit Court of Appeals for the Second Circuit, 51 F. (2d) 1007. This Court granted certiorari.

Shortly after the collision, the Wreck Commissioner of Canada held a formal investigation, as required by law, respecting the circumstances of the collision, and determined that the masters of both vessels were at fault. The respondent then instituted in the admiralty court of Canada a proceeding for the judicial determination of the liability as between the colliding vessels and their owners.

The libellants' motive for invoking the jurisdiction of a court of the United States, instead of that of the Canadian court in which that proceeding was pending, appears in affidavits filed with the exceptions to the libel. Under the Canadian law, it is stated, if both colliding vessels were at fault each vessel would be liable for not more than half of the loss; and the salvaged value of the Yorkton might not suffice to pay its share. See *The Milan,* Lush. Adm. 401. Under our law the innocent cargo-owner can recover full damages from the non-carrying vessel. *The New York,* 175 U. S. 187, 209, 210.

The libellants concede, as they must, that in a suit in admiralty between foreigners it is ordinarily within the discretion of the District Court to refuse to retain jurisdiction; and that the exercise of its discretion will not be disturbed unless abused. *Charter Shipping Co.* v. *Bowring, Jones & Tidy, Ltd.,* 281 U. S. 515, 517. Compare *Watts, Watts & Co.* v. *Unione Austriaca di Navigazione,* 248 U. S. 9; *Langnes* v. *Green,* 282 U. S. 531, 544. They claim, however, that the rule is not applicable here since the cause of action arose within the territorial limits of the United States; and, moreover, that if the District Court had discretion, the decrees should be reversed because, on the undisputed facts, it was an abuse of discretion to decline jurisdiction. We are of opinion that neither claim is well founded.

First. The contention that the jurisdiction was obligatory rests upon the fact that the collision occurred within the territorial waters of the United States. The argument is that a cause of action arising from a collision occurring on territorial waters of the United States arises out of its laws, since within its territory there can be no other law, *Smith* v. *Condry,* 1 How. 28, 33; *Slater* v. *Mexican National R. Co.,* 194 U. S. 120, 126; *New York Central R. Co.* v. *Chisholm,* 268 U. S. 29, 32; that the Constitution, Art. III, § 2, cl. 1, extends the judicial

power to "all cases of admiralty and maritime jurisdiction;" that § 24 of the Judicial Code confers upon the District Court jurisdiction "of all civil causes of admiralty and maritime jurisdiction;" and that by vesting jurisdiction in that Court, Congress imposed a duty upon it to exercise the jurisdiction, *Cohens* v. *Virginia,* 6 Wheat. 264, 404; *McClellan* v. *Carland,* 217 U. S. 268, 281; *Second Employers' Liability Cases,* 223 U. S. 1, 58, 59. In support of the argument that there is no power to decline jurisdiction in cases where the cause of action arose within the United States, the libellants urge the statement in *The Belgenland,* 114 U. S. 355, 365, that "the courts will use a discretion about assuming jurisdiction of controversies between foreigners in cases arising beyond the territorial jurisdiction of the country to which the courts belong."

The respondent insists that the doctrine of *lex loci delicti* has no application to cases of collision on the Great Lakes; that the Great Lakes and their connecting channels constitute public navigable waters, irrespective of the location of the international boundary, and possess all the characteristics of the high seas, *The Eagle,* 8 Wall. 15, 22; *United States* v. *Rodgers,* 150 U. S. 249, 256; *Panama R. Co.* v. *Napier Shipping Co.,* 166 U. S. 280, 285; *The New York,* 175 U. S. 187; *The Robert W. Parsons,* 191 U. S. 17, 27; that in a case of collision on the high seas between two vessels of the same nationality, liability is governed by the law of the flag, *The Scotland,* 105 U. S. 24, 29, 30; *The Eagle Point,* 142 Fed. 452, 454; that the Canadian law would apply in the cases at bar; and that hence, the asserted ground for the District Court's retaining jurisdiction fails.

We have no occasion to enquire by what law the rights of the parties are governed, as we are of the opinion that, under any view of that question, it lay within the discretion of the District Court to decline to assume jurisdiction

over the controversy. The suggestion drawn from the language in *The Belgenland, supra*, that such discretion exists only "in cases arising beyond the territorial jurisdiction of the country to which the courts belong," is without support in either the earlier or the later decisions of this Court. Nor is it justified by the language relied on, when that language is read in its context. The case of *The Belgenland* arose out of a collision on the high seas between foreign vessels of different nationalities; and the objection was raised that the courts of the United States were wholly without jurisdiction. Mr. Justice Bradley, speaking for the Court, replied that jurisdiction in admiralty did exist over controversies between foreigners arising without the territorial waters of this country, but that the court in such a case would use its discretion in determining whether to exercise it. That the Court had no intention of denying the existence of similar discretion, where the cause of action arose within the territorial waters of this country, is shown by its reference to the cases of *The Maggie Hammond,* 9 Wall. 435, 457, and *Taylor* v. *Carryl,* 20 How. 583, 611, in which no such limitation was expressed, and which the Court described as "accurately stating" the law. The doctrine of these earlier cases was recently reiterated by this Court, in similar terms, in *Langnes* v. *Green,* 282 U. S. 531, 544, where it was said: "Admiralty courts . . . have complete jurisdiction over suits of a maritime nature between foreigners. Nevertheless, 'the question is one of discretion in every case, and the court will not take cognizance of the case if justice would be as well done by remitting the parties to their home forum.'" See also *Charter Shipping Co.* v. *Bowring, Jones & Tidy, Ltd.,* 281 U. S. 515, 517.[1]

[1] Compare *Mason* v. *The Blaireau,* 2 Cranch 240, 264; *Ex parte Newman,* 14 Wall. 152, 168, 169; *Panama R. Co.* v. *Napier Shipping Co.,* 166 U. S. 280, 285.

The rule recognizing an unqualified discretion to decline jurisdiction in suits in admiralty between foreigners appears to be supported by an unbroken line of decisions in the lower federal courts.[2] The question has most frequently been presented in suits by foreign seamen against masters or owners of foreign vessels, relating to claims for wages and like differences,[3] or to claims of personal injury.[4] Although such cases are ordinarily decided ac-

[2] See note 5, *infra*. See also *One Hundred and Ninety-four Shawls*, 1 Abb. Adm. 317, 321; Fed. Cas. No. 10,521; *The Sailor's Bride*, 1 Brown's Adm., 68, 70; Fed. Cas. No. 12,220; *The Bee*, 1 Ware 336, 339; Fed. Cas. No. 1,219; *Muir* v. *The Brig Brisk*, 4 Ben. 252, 254; Fed. Cas. No. 9,901; *Thomassen* v. *Whitwell*, 9 Ben. 113; Fed. Cas. No. 13,928; *Boult* v. *Ship Naval Reserve*, 5 Fed. 209; *The City of Carlisle*, 39 Fed. 807, 815; *Goldman* v. *Furness, Withy & Co.*, 101 Fed. 467, 469; *The Kaiser Wilhelm der Grosse*, 175 Fed. 215, 216, 217; *The Iquitos*, 286 Fed. 383, 384; *Danielson* v. *Entre Rios Rys. Co.*, 22 F. (2d) 326, 327; *The Canadian Commander*, 43 F. (2d) 857, 858.

[3] Jurisdiction was declined in *Willendson* v. *The Försöket*, 1 Pet. Adm. 197; Fed. Cas. No. 17,682; *The Infanta*, 1 Abb. Adm. 263, 268, 269; Fed. Cas. No. 7,030; *The Ada*, 2 Ware 408; Fed. Cas. No. 38; *The Becherdass Ambaidass*, 1 Lowell 569; Fed. Cas. No. 1,203; *The Montapedia*, 14 Fed. 427; *The Ucayali*, 164 Fed. 897, 900; *The Albani*, 169 Fed. 220, 222.

In the following cases jurisdiction was taken, but the existence of discretion recognized: *Thompson* v. *The Ship Catharina*, 1 Pet. Adm. 104; Fed. Cas. No. 13,949; *Weiberg* v. *The Brig St. Oloff*, 2 Pet. Adm. 428; Fed. Cas. No. 17,357; *Davis* v. *Leslie*, 1 Abb. Adm. 123, 131; Fed. Cas. No. 3,639; *Bucker* v. *Klorkgetter*, 1 Abb. Adm. 402, 405, 406; Fed. Cas. No. 2,083; *The Pawashick*, 2 Lowell 142, 151; Fed. Cas. No. 10,851; *The Brig Napoleon*, Olcott, 208, 215; Fed. Cas. No. 10,015; *The Bark Lilian M. Vigus*, 10 Ben. 385; Fed. Cas. No. 8,346; *The Amalia*, 3 Fed. 652, 653; *The Salomoni*, 29 Fed. 534, 537; *The Topsy*, 44 Fed. 631, 633, 635; *The Sirius*, 47 Fed. 825, 827; *The Karoo*, 49 Fed. 651; *The Lady Furness*, 84 Fed. 679, 680; *The Alnwick*, 132 Fed. 117, 120; *The August Belmont*, 153 Fed. 639; *The Sonderberg*, 47 F. (2d) 723, 725.

[4] Jurisdiction was declined in *The Carolina*, 14 Fed. 424; *Camille* v. *Couch*, 40 Fed. 176; *The Walter D. Wallet*, 66 Fed. 1011, 1013;

cording to the foreign law, they often concern causes of action arising within the territorial jurisdiction of the United States, compare *Patterson* v. *The Eudora,* 190 U. S. 169; *The Kestor,* 110 Fed. 432, 450. Neither in these, nor in other cases, has the bare circumstance of where the cause of action arose been treated as determinative of the power of the court to exercise discretion whether to take jurisdiction.[5]

Obviously, the proposition that a court having jurisdiction must exercise it, is not universally true; else the admiralty court could never decline jurisdiction on the ground that the litigation is beween foreigners. Nor is it true of courts administering other systems of our law.

The Lamington, 87 Fed. 752, 757; *The Knappingsborg,* 26 F. (2d) 935, 937. See also *Bolden* v. *Jensen,* 70 Fed. 505, 509. Compare *Bernhard* v. *Creene,* 3 Sawy. 230, 234; Fed. Cas. No. 1,349; *The Noddleburn,* 30 Fed. 142, 143; *The Troop,* 118 Fed. 769, 772.

[5] The only case supporting the position of the petitioners which has been called to our attention is *The Apurimac,* 7 F. (2d) 741, 742, involving an action by a foreign seaman for injuries sustained on a foreign vessel lying in American waters. The expressions of the District Court in this case, however, were disapproved by the Circuit Court of Appeals for the Fourth Circuit, which affirmed the judgment on the ground that jurisdiction, although discretionary, had been properly taken. *Heredia* v. *Davies,* 12 F. (2d) 500, 501.

In *The Steamship Russia,* 3 Ben. 471, 476–479, Fed. Cas. No. 12,168, the district court for the southern district of New York, took jurisdiction of a libel arising out of the collision of foreign vessels of different nationalities in New York harbor, but expressly treated the question as one within its discretion. In *The Bifrost,* 8 F. (2d) 361, 362, jurisdiction was declined in an action by foreign seamen for breach of contract in shipping articles, although it was urged that the articles were signed in this country and governed by its law. See also *Fairgrieve* v. *Marine Ins. Co.,* 94 Fed. 686, 687; *The Ester,* 190 Fed. 216, 221; *Cunard S. S. Co.* v. *Smith,* 255 Fed. 846, 848, 849; *The Eemdyjk,* 286 Fed. 385; *The Seirstad,* 12 F. (2d) 133, 134; *The Fredensbro,* 18 F. (2d) 983, 984; *The Sneland I,* 19 F. (2d) 528, 529; *The Falco,* 20 F. (2d) 362, 364. Compare *Neptune Steam Nav. Co.* v. *Sullivan Timber Co.,* 37 Fed. 159.

Courts of equity and of law also ocassionally decline, in the interest of justice, to exercise jurisdiction, where the suit is between aliens or non-residents or where for kindred reasons the litigation can more appropriately be conducted in a foreign tribunal.[6] The decisions relied upon by libellants are inapposite for several reasons. They were not in admiralty causes; nor did they involve alien or non-resident parties. Compare *Second Employers' Liability Cases,* 223 U. S. 1, 58, 59, with *Douglas* v. *New York, New Haven & Hartford R. Co.,* 279 U. S. 377. The cases of *Cohens* v. *Virginia,* 6 Wheat. 264, 404, and *McClellan* v. *Carland,* 217 U. S. 268, 281, denied the right to abdicate to state courts jurisdiction which the Constitution in positive terms entrusts to the federal judiciary.

Second. There is no basis for the contention that the District Court abused its discretion. All the parties were not only foreigners, but were citizens of Canada. Both the colliding vessels were registered under the laws of Canada; and each was owned by a Canadian corporation. The officers and the crew of each vessel—the material witnesses—were citizens and residents of that country; and so would not be available for compulsory attendance in the District Court. The cargo, in each case, was shipped under a Canadian bill of lading from one Canadian port to another. The collision occurred at a point where the inland waters narrowed to a neck and the District Court concluded that the colliding vessels proceeded

[6] Compare *Davis* v. *Farmers' Co-operative Equity Co.,* 262 U. S. 312; *Logan* v. *Bank of Scotland,* (1906) 1 K. B. 141; *Société du Gaz de Paris* v. *Armateurs Francais,* (1926) Sess. Cas. (H. L.) 13. See, for collections of authorities, Paxton Blair, "The Doctrine of Forum Non Conveniens in Anglo-American Law," 29 Col. L. Rev. 1; Roger S. Foster, "Place of Trial in Civil Actions," 43 Harv. L. Rev. 1217, "Place of Trial—Interstate Application of Intrastate Methods of Adjustment," 44 *id.* 41; Note, 32 A. L. R. 6.

in United States waters unintentionally. If the libellants are entitled to have applied the law of the United States in respect to the liability, the Canadian courts will, it must be assumed, give effect to it. The District Court embodied in the decrees an order that the respondent should appear and file security in any action which might be instituted by the petitioners in the admiralty courts of Canada, so that petitioners would not by dismissal of the libels lose the security gained by the foreign attachment. It is difficult to conceive of a state of facts more clearly justifying the refusal of a District Court to retain jurisdiction in a cause between foreigners.

Affirmed.

MR. JUSTICE CARDOZO took no part in the consideration or decision of these cases.

UNITED STATES *v.* LIMEHOUSE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

No. 513. Argued February 25, 26, 1932.—Decided April 11, 1932.

1. In § 211 of the Criminal Code, which declares unmailable "every obscene, lewd, or lascivious, and every filthy" book, letter, etc., "or other publication of an indecent character," and punishes the mailing of such things, the words "and every filthy" add a new class to the matter included when this Court construed the prohibition (R. S. 3893) as confined to matter "calculated to corrupt and debauch the minds and morals of those into whose hands it might fall" and to induce sex immorality. *Swearingen* v. *United States*, 161 U. S. 446. P. 426.
2. The section is *held* applicable to letters that contained much foul language and that charged the addressees, or persons associated with them, with sex immorality. *Id.*

58 F. (2d) 395, reversed.

APPEAL under the amended Criminal Appeals Act from an order quashing an indictment on demurrer.